

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-76054; File No. SR-BATS-2015-78)

September 30, 2015

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Delete Rule 2.13, Fidelity Bonds

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 24, 2015, BATS Exchange, Inc. (the “Exchange” or “BZX”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6)(iii) thereunder,<sup>4</sup> which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to delete Rule 2.13, Fidelity Bonds, in order to conform to the rules of EDGA Exchange, Inc. (“EDGA”) and EDGX Exchange, Inc. (“EDGX”).

The text of the proposed rule change is available at the Exchange’s website at [www.batstrading.com](http://www.batstrading.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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<sup>1</sup> See 15 U.S.C. 78s(b)(1).

<sup>2</sup> See 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6)(iii).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A., B., and C. below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In early 2014, the Exchange and its affiliate, BATS Y-Exchange, Inc. (“BYX”), received approval to effect a merger (the “Merger”) of the Exchange’s parent company, BATS Global Markets, Inc., with Direct Edge Holdings LLC, the indirect parent of EDGX and EDGA (together with BZX, BYX and EDGX, the “BGM Affiliated Exchanges”).<sup>5</sup> In the context of the Merger, the BGM Affiliated Exchanges are working to align its [sic] rules, retaining only intended differences between the BGM Affiliated Exchanges. Thus, the proposal set forth below is intended to delete Rule 2.13, Fidelity Bonds, in order to conform to the rules of EDGA and EDGX in order to provide a consistent rule set across each of the BGM Affiliated Exchanges.<sup>6</sup>

In sum, Exchange Rule 2.13(a) states that each Member<sup>7</sup> required to join the Securities Investor Protection Corporation (“SIPC”) who has employees and who is a

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<sup>5</sup> See Securities Exchange Act Release No. 71375 (January 23, 2014), 79 FR 4771 (January 29, 2014) (SR-BATS-2013-059; SR-BYX-2013-039).

<sup>6</sup> The Exchange notes that BYX intends to file a proposal to delete its identical Rule 2.13, Fidelity Bonds.

<sup>7</sup> A Member is defined as “any registered broker or dealer that has been admitted to membership in the Exchange.” See Exchange Rule 1.5(n).

member in good standing of another self-regulatory organization shall follow the applicable fidelity bond rule of the self-regulatory organization to which it is designated by the Commission for financial responsibility pursuant to Section 17 of the Act and SEC Rule 17d-1 thereunder (i.e., its Designated Examining Authority or “DEA”).

Subparagraph (b) to Rule 2.13 simply incorporates by reference NASD Rule 3020 (now FINRA Rule 4360) in to Exchange Rule 2.13. Subparagraph (c) of Rule 2.13 states that references to: (i) an “Association member” shall be construed as references to a “Member”; and (ii) Article I, paragraph (q) of the By-Laws shall be construed as references to Exchange Rule 1.5(q). Lastly, subparagraph (d) to Rule 2.13 states that pursuant to Exchange Rule 1.6, any Member subject to paragraph (c) of NASD Rule 3020 (now FINRA Rule 4360), through the application of paragraph (b) of Rule 2.13, may apply to the Exchange for an exemption from such requirements. The exemption may be granted upon a showing of good cause, including a substantial change in the circumstances or nature of the Member’s business that results in a lower net capital requirement. The Exchange may issue an exemption subject to any condition or limitation upon a Member’s bonding coverage that is deemed necessary to protect the public and serve the purposes of Rule 2.13.

The Exchange does not, nor does it currently intend to, act in the capacity of a DEA. Therefore, Rule 2.13 is obsolete as it does not apply to any of the Exchange’s Members.<sup>8</sup> The Exchange believes that eliminating Rule 2.13 would avoid unnecessary confusion with respect to the Exchange’s rules because it does not have a direct nexus to

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<sup>8</sup> The Exchange will submit a rule filing to the Commission to adopt requirements similar or identical to current Rule 2.13 should it become a DEA for any of its Members in the future.

the trading on the Exchange or the relationship between the Exchange and its Members. Deleting Rule 2.13 would not ease any of the requirements on its Members that are required to join SIPC as the Financial Industry Regulatory Authority (“FINRA”) and the New York Stock Exchange, Inc. (“NYSE”) serve as a DEA for those Members and include rules with similar requirements as current Exchange Rule 2.13.<sup>9</sup> In addition, the Exchange notes that EDGA and EDGX do not contain a similar rule. As a result, eliminating Rule 2.13 would also provide for a consistent rule set across each of the BGM Affiliated Exchanges.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.<sup>10</sup> Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,<sup>11</sup> because it is designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change is designed to provide a consistent rule set across each of the BGM Affiliated Exchanges. As mentioned above, the proposed rule changes, combined with the planned filing for BYX, would provide for a consistent set of rules across each of the BGM Affiliated Exchanges. Consistent rules, in turn, will simplify the regulatory requirements for Members of the Exchange that are also participants on EDGA, EDGX and/or BYX as

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<sup>9</sup> See FINRA Rule 4360 and NYSE Rule 4360.

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

well as result in greater uniformity, less burdensome and more efficient regulatory compliance and understanding of Exchange Rules. As such, the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system.

In addition, the proposed rule change would eliminate unnecessary confusion with respect to the Exchange's rules by removing a rule that has never had a direct nexus to the trading on the Exchange or the relationship between the Exchange and its Members. The Exchange believes that Rule 2.13 is obsolete as the Exchange does not, nor does it currently intend to, act in the capacity of a DEA. Deleting Rule 2.13 would not ease any of the requirements on its Members that are required to join SIPC as FINRA and the NYSE serve as a DEA for those Members and include rules containing similar requirements as current Exchange Rule 2.13.<sup>12</sup> The Exchange believes that eliminating these rules will reduce any investor confusion regarding a rule the Exchange has never applied, nor intends to apply. Further, eliminating unnecessary and obsolete rules removes impediments to the perfection of the mechanisms for a free and open market system consistent with the requirements of Section 6(b)(5) of the Act.<sup>13</sup>

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that deleting Rule 2.13 will align Exchange rules with those of the BGM Affiliated Exchanges. The Exchange has never utilized this rule, nor

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<sup>12</sup> See FINRA Rule 4360 and NYSE Rule 4360.

<sup>13</sup> 15 U.S.C. 78f(b)(5).

does the Exchange intend to utilize it in the future. Therefore, the Exchange does not believe that eliminating Rule 2.13 will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A) of the Act<sup>14</sup> and paragraph (f)(6) of Rule 19b-4 thereunder.<sup>15</sup> The proposed rule change effects a change that (A) does not significantly affect the protection of investors or the public interest; (B) does not impose any significant burden on competition; and (C) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily temporarily suspend such rule change if it appears to the Commission that such action is: (1) necessary or appropriate in the public interest; (2) for the protection of investors; or (3) otherwise in furtherance of the purposes of the Act. If

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<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 C.F.R. 240.19b-4.

the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BATS-2015-78 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-BATS-2015-78. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the

Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-BATS-2015-78 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

Robert W. Errett  
Deputy Secretary

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<sup>16</sup> See 17 CFR 200.30-3(a)(12).